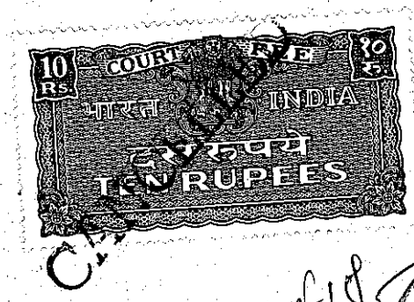

(3)

c/f-19

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

Miscellaneous Appeal No 637/2002

Applicant/Plaintiff :- Wahid Ahmed
S/o Nazir Ahmed
Aged 47 years
R/o Jarhabhata, Ward - 7
Tah. & Distt. Bilaspur (C.G.)

P.R. No. 17/10/02
Presented by Shri ... Anil Kumar Dubey
dated ... 29/10/02 ...

VERSUS

Respondent/Defendant :- Ganesh Sonwani
S/o Chandan Sonwani
Aged 40 years
R/o Rajendra Nagar,
Tah. & Distt. Bilaspur (C.G.)

MISCELLANEOUS UNDER ORDER 43 C.P.C.

AFR

(60)

HIGH COURT OF CHHATTISGARH AT BILASPUR
M.A. NO. 637 OF 2002

Wahid Ahmed

-v-

Ganesh Sonwani

ORDER POST FOR 8-8-2002

Sd/-
Fakhruddin
Judge

(6)

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. NO. 637 OF 2002

Wahid Ahmed

-v-

Ganesh Sonwani

O R D E R

Shri Anil Pandey, Advocate for the appellant.

Shri J.A. Lohani, Advocate for the respondent.

Heard.

2. The plaintiff filed a suit before the trial Court for declaration and permanent injunction and also claimed for temporary injunction. An ex parte injunction was granted but subsequently, on appearance by defendant, the said order was vacated. Thereafter, the plaintiff preferred an appeal. The said appeal was dismissed and thereafter a revision was filed being C.R. No. 461/2001before this Court. The said revision was dismissed vide order dated 19-6-2002. It is noted in the said order that at that time, since the main suit itself had been dismissed, therefore, the revision petition was also stand

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dismissed. The interim order passed on 20-7-2001 was also vacated. The suit being dismissed, the plaintiff preferred an appeal before the lower appellate Court. He also filed an application under Order 39 Rule 1 and 2 along with Section 151 of the Code of Civil Procedure. The said application was opposed. The learned appellate Court by the impugned order has rejected the said application.

3. Shri Pandey, learned counsel for the appellant submitted that the Court committed error in holding that it has no jurisdiction under 39 Rule 1 and 2 of the C.P.C. read with Section 151 of the C.P.C. It is submitted that the jurisdiction is inherent.

4. Shri Lohani on the other hand submitted that the lower appellate Court has considered the order passed in revision and while dismissing the application under Order 39 Rule 1 and 2 of the C.P.C., the Court also vacated the interim order. He further submits that the trial Court has recorded the finding against the plaintiff.

5. So far as the grant of injunction or otherwise during pendency of appeal is concerned, apart from the provisions contained in Order 39 Rule 1 and 2 of C.P.C., the

appellant had also made the application under Section 151 of C.P.C. Section 151 of C.P.C. confers inherent powers on the Court. It is well settled that keeping in mind the facts and circumstances of the case, the appellate Court could exercise inherent powers to safeguard interest of the parties in the ends of justice. The Court below failed to consider this aspect in proper prospective and the order passed to that extent is not sustainable.

6. However so far as the present case is concerned, counsel for the parties submit that the intricate question raised may not be decided and ends of justice will be served if the condition is imposed to the effect that the construction if any made shall be subject to the final decision of the matter and at the risk of the respondent and in case the plaintiff finally succeeds, the defendant shall deliver peaceful possession to the plaintiff removing the construction at his own costs and he will not claim any damage.

7. In view of the facts and circumstances of the case, material on record and the submissions which have been made by the counsel for the rival parties, it is directed that if any construction is made, the same shall be subject to the

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final decision of the matter and in case, the appeal is finally allowed, the peaceful possession shall be delivered by the defendant to the plaintiff.

9. In view of the above, the appeal is finally disposed of.

Sd/-
Fakhruddin
Judge

PATHAK